

### **REMARKS/ARGUMENTS**

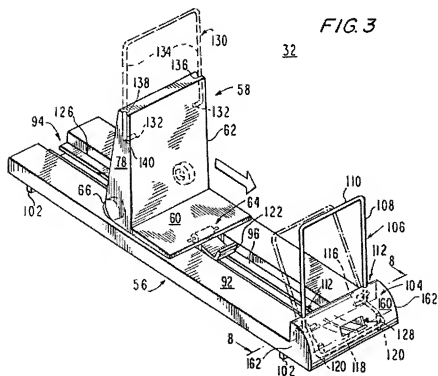
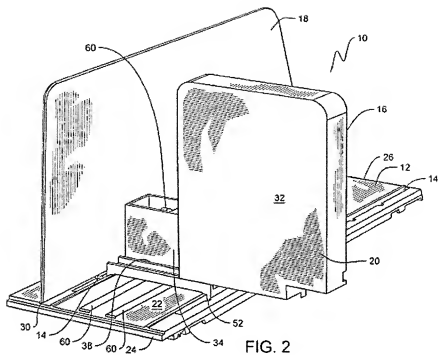
The Final Office Action of August 17, 2006 and Advisory Action of September 15, 2006 have been carefully reviewed and this paper is the Applicant's response thereto. Reconsideration and allowance of the instant application are respectfully requested. Applicant notes with appreciation the allowance of claims 1-12.

Claims 13-18, 23, 24, 25-30, and 35 were rejected under 35 U.S.C. 102(b) as being anticipated by Merl (6,142,317). Claims 19, 20, 31, 32 and 36-49 were rejected under 35 U.S.C. 103(a) as being unpatentable over Merl in view of Spamer et al (5,634,564). Claims 21, 22, 33, 34 and 40-43 were objected to as being dependent upon a rejected base claim.

By this response, claims 13, 25 and 36 have been amended.

### **Rejection Under 35 U.S.C. § 102(b)**

Claims 13-18, 23, 24, 25-30, and 35 were rejected under 35 U.S.C. 102(b) as being anticipated by Merl (6,142,317). The Office Action alleged that, like claim 13, Merl teaches "a pusher face that is extendable transversely relative to the track." In fact, Merl is silent on projecting or extending in any direction other than upwards. In response, and to expedite prosecution of the application, claims 13 and 36 have been amended to include alternate terminology to clarify the directions in which the pusher face is extendable. Describing the pusher face as "extendable outwardly across the track" is supported at least by Figs. 2 and 3, which show the pusher face in extended positions across the track. For convenience, Fig. 2 is provided below. The pusher face of amended claim 13 cannot be considered equivalent to Merl's extension bail that projects in the direction upward from the track, because "upward" is merely perpendicular to the track, not across it. See Fig. 3 of Merl below. Furthermore, Merl is silent on accommodating wide products that would require support across the track.



Claim 25 is amended to clarify in which plane the pusher face extends perpendicular to the track, now reciting in part, “a pusher face that is movable along the track and is slidably configured to extend substantially horizontally perpendicular to the track.” As stated above, Merl teaches an upward projection, which is different from a pusher face that extends horizontally perpendicular to the track. Consequently, not every limitation of amended claims 13 and 25 is disclosed by Merl. Claims 14-18, 23, 24, 26-30 and 35 that depend on claims 13 and 25 are not anticipated by Merl for the same reasons and for the additional limitations recited in those claims. Therefore, reconsideration and withdrawal of the ground for rejection is respectfully requested.

**Rejection Under 35 U.S.C. § 103(a)**

Claims 19, 20, 31, 32 and 36-39 were rejected under 35 U.S.C. 103(a) as being unpatentable over Merl (6,142,317) in view of Spamer et al (5,634,564). In response, claim 36 has been amended to clarify the directions in which the pusher face is extendable. Claim 36 now recites, in part, “the pusher face is extendable outwardly across ~~transversely relative to~~ the track from a first position to one of a plurality of second positions.” The pusher face of amended claim 36 cannot be considered equivalent to Merl’s extension bail that projects in the direction upward from the track, because “upward” is merely perpendicular to the track, not across it. For at least the reasons stated that Merl does not anticipate any pending claims, Merl in view of Spamer does not render obvious the pending claims. Merl teaches an extension bail attachable to a pusher face that projects upwardly. It would not be obvious, and there is no motivation in Merl or Spamer, to modify a pusher head with a removable bail projecting in an upward direction to achieve a pusher face that itself extends either outwardly across the track or substantially horizontally perpendicular to the track. Spamer is directed to a pusher device for dispensing articles, including an urging spring. Spamer does not teach a pusher face extendable in a direction across or horizontally perpendicular to the track. Consequently, Spamer does not obviate the deficiencies identified above with respect to Merl. As a result, Merl in view of

Spamer does not render obvious any pending claims and Applicant respectfully requests withdrawal of the ground for rejection.

#### **Claim Objections**

Claims 21, 22, 33, 34 and 40-43 stand objected to as being dependent on rejected base claims 13, 25, 36. In response, claims 13, 25 and 36 were amended to clarify the directions in which the pusher face may extend, more clearly distinguishing claims 13, 25 and 36 above the prior art, as discussed in detail above. Consequently, the base claims to the claims objected to should be allowable and therefore the objection is respectfully requested to be withdrawn.

#### **CONCLUSION**

It is believed that all claims are in allowable condition. The commissioner is hereby authorized to charge any fee due or credit any overpayment of fee to Deposit Account No. 19-0733.

All rejections and objections having been addressed, Applicant respectfully submits that the application is in condition for allowance and requests prompt notification of the same.

Respectfully submitted,

BANNER & WITCOFF, LTD.

Dated: October 3, 2006

By: \_\_\_\_\_



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